

Remarks/Arguments:

Claims 1-13 and 27-40 stand rejected.

Responsive to Examiner's last decision mailed March 17, 2003, Applicants filed a Notice of Appeal on May 2, 2003. Applicants' Appellant's Brief Pursuant to 37 CFR 1.192 and an Amendment were filed on July 2, 2003. The Examiner's Answer was mailed February 24, 2004. Appellant's argument before the Board of Patent Appeals and Interferences (the Board) was heard on March 9, 2005 and the Board's Decision on Appeal was mailed March 29, 2005. In its Decision, the Board affirmed the Examiner.

The Board's position is that (1) while the primary reference (Andrieu et al.) does not use a high performance yarn, the teachings of the secondary reference (Holland et al.) are sufficient to have made it obvious at the time the invention was made to a person of ordinary skill in the art to have modified the primary reference to utilize the high performance material; and, (2) Holland's teachings of a fabric which overcomes the disadvantages of polyester fabric provides sufficient motivation to have modified Andrieu et al. Applicants' position has been that (1) Andrieu et al. uses polyester, not a high performance yarn having a tensile strength greater than 150 grams/denier and a tenacity equal to or greater than 7 grams/denier; (2) there is no teaching or suggestion in Andrieu et al. (the primary reference) of any reason which would suggest a modification to utilize a yarn such as that taught by Holland et al.; and, (3) in fact, because of the teachings of Andrieu et al., there would be a substantial disincentive for one of ordinary skill in the art to substitute Applicants' significantly more expensive yarn material.

In addition to the arguments presented earlier that the combination of references is improper to reject the claims, Applicants now respectfully present objective evidence under 37 CFR 1.132 of Applicants' entitlement to a Patent. In accord with *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), Applicants present for the Examiner's examination and consideration such Secondary Considerations as long-felt but unsolved need, failure of others, unexpected results, and commercial success relevant to the invention claimed in the pending application. Accordingly, the Declaration of John E. Holland is submitted herewith.

Declarant is a co-inventor of the present application, as well as the President of JHRG, LLC, assignee of the entire right and interest in the pending application. Mr. Holland has extensive expertise in the textile and materials industry, spanning a period of 30 years (see paragraphs 1-3).

Declarant provides specific examples of the existence of a long-felt need to solve the significant and costly problem of chafing, abrasion, and wear of materials in the maritime industry, and the failure of others and other products to solve this problem.. As noted in several of the examples and Exhibits, those of ordinary skill in the maritime industry have asserted that the claimed anti-chafe product provides a solution to a problem that has existed for at least decades. In particular:

- (1) In paragraph 12 and Exhibit A, SAIL Magazine's technical editor describes Applicant's chafing gear product as being one of the "best new products" for cruisers (sailing) that SAIL's technical consultant has seen in his years of cruising. The author notes he himself has spent years trying different solutions, none of which solved the problem.
- (2) As noted in paragraph 13 and Exhibit B, Samson Rope Technologies, a leader in the rope and cordage industry for over 100 years, even attempted to use fire hose as an anti-chafing sleeve over critical portions of cordage and rope, but now has chosen Applicant's product over other chafing gear on the market. They didn't chose Applicants' product because it was cheaper.
- (3) In paragraph 14 and Exhibit C, Titan Maritime notes that Applicant's product solves the serious problem of wear and tear of umbilicals, rigs, hoses, etc. that other types of products, including fire hose, have failed to solve.
- (4) In paragraph 16 and Exhibit E, McAllister Towing of Florida notes that Applicant's product is the "best piece of chafe gear" in "30 years in the business".

Applicant's product has also seen unexpected results and experiences in the market. Examples include:

(1) Evident in paragraph 10, it took over two years for potential customers to appreciate the results/benefits they would see from a product that is substantially more expensive.

(2) As Declarant describes in paragraph 18, in particular, the claimed anti-chafe product formed of a fabric of SPECTRA® yarns has a slick surface characteristic. Unexpectedly, when this slick, inner surface is placed over the line to be protected, there is minimal friction, minimal heat buildup, with no or minimal degradation of the cover or the underlying protected line.

In terms of commercial success:

(1) While gross sales of a product, such as the claimed anti-chafe product, are alone not necessarily an indication of commercial success, as Declarant notes in paragraph 5, prior to 2002 JHRG had no market share in the market for similar products. More particularly, and when considered with Declarant's specific examples of commercial success, the growth of sales has been significant since introduction of the product in 2002 (see paragraph 6).

(2) As Declarant explains in paragraphs 9 and 10, it took over two years to convince potential customers of the value and benefits of the claimed invention.

(3) In paragraphs 7 and 8, Declarant provides data on and compares the features, service lives, and costs of the claimed anti-chafe product with unsuccessful products made of CORDURA® and ballistic nylon.

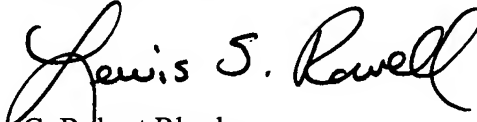
(4) With respect to paragraph 15, JHRG's sales (and sales growth) to the United States Government, and the United States Navy and United States Coast Guard in particular, are compelling evidence of the commercial success of this product, or any product for that matter.

The several statements made by Declarant establish that the secondary considerations that he describes therein are a result of the claimed invention itself and not the advertising thereof. Therefore, the statements confirm the nexus between the merits of the claimed invention and

such considerations (see, for example, paragraphs 4, 7, 11, 12 and Exhibit A, and 15). *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 305 n42, 227 USPQ 657, 673-674 n42 (Fed. Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986).

In view of the secondary evidence provided in the attached Declaration and the remarks contained herein, Applicants believe that they have sufficiently presented secondary evidence, not previously available to the Examiner, that demonstrates that Applicant is assuredly entitled to the grant of a Patent on the application now pending. If the Examiner requires additional detail, or if any questions remain unresolved, Applicant's counsel would appreciate the courtesy of a telephone call to expedite a response to the Examiner's requirements.

Respectfully submitted,



C. Robert Rhodes
Registration No. 24,200
Lewis S. Rowell
Registration No. 45,469
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
300 N. Greene Street, Suite 1900
Greensboro, NC 27401
(336) 574-8040

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